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Shoreland Protection Administrative Rules

Env-Ws 1400

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CHAPTER Env-Ws 1400 SHORELAND PROTECTION

Statutory Authority: RSA 483-B:17

Part Env-ws 1401 Purpose And Applicability

Env-Ws 1401.01 Purpose. The purpose of these rules is to implement RSA 483-B, the comprehensive shoreland protection act.

Env-Ws 1401.02 Applicability. These rules shall apply to all land areas subject to RSA 483-B, namely, all land areas:

- (a) Within 250 feet, horizontal distance, of the natural mean high water level of natural fresh water bodies without artificial impoundments listed in the official list of public waters published by the department;
- (b) Within 250 feet, horizontal distance, of the water line at full pond as determined by the elevation of the top of the impoundment structure of artificially impounded fresh water bodies listed in the official list of public waters;
- (c) Within 250 feet, horizontal distance, of the highest observable tide line of coastal waters; and
- (d) Within 250 feet, horizontal distance, of the ordinary high water mark of rivers, meaning all year-round flowing waters of fourth order or higher, as shown on the current version of the U.S. Geological Survey topographic maps as defined in RSA 483-B:4, XVI (c), excluding those land areas exempted by RSA 483-B:20.

Part Env-ws 1402 Definitions

Env-Ws 1402.01 Statutory Definitions. Any term used in these rules shall have the same meaning as in RSA 483-B:4.

Env-Ws 1402.02 Additional Definitions. In addition to the statutory definitions, the following definitions shall apply:

- (a) "Fertilizer" means any substance containing one or more recognized plant nutrient(s) which is used primarily for its plant nutrient content and which is designed for use or claimed to have value in promoting plant growth.
- (b) "Non-conforming lot" means a lot that does not meet current state or local subdivision, zoning, or other lot size or setback requirements.

Part Env-ws 1403 Enforcement Of The Natural Woodland Buffer

Env-Ws 1403.01 Well-Distributed Stand. If ordered by the department to restore a well-distributed stand of trees, saplings, shrubs and ground cover, the violator shall submit a restoration plan for approval that describes:

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- (a) The species of plants proposed for replanting;
- (b) The number of plants proposed for replanting;
- (c) The basal area of the trees proposed for replanting;
- (d) The existing trees within the natural woodland buffer; and
- (e) The existing and proposed structures, including but not limited to the primary building, accessory structures, and water-dependent structures.

Env-Ws 1403.02 Plan Approval. The department shall approve plans that meet the following criteria:

- (a) Replacement plantings shall meet one of the following:
 - (1) Replacement plants shall consist of the species that are as close as possible to the species present prior to vegetation removal; or
 - (2) At least 75 percent of the replacement plants shall be chosen from the natural woodland buffer plantings list included as appendix *D*.
- (b) Replacement plants shall have spatial and compositional diversity that replicates a natural woodland buffer.
- (c) Replacement and remaining trees shall comprise at least 50 percent of the basal area that existed prior to cutting.
- (d) Replacement trees shall be placed no further apart than 10 feet on center.
- (e) There shall be no changes to surface drainage unless a sediment and erosion control plan is submitted and approved. The sediment and erosion control plan shall be submitted with the restoration plan and shall meet the requirements specified in Env-Ws 415.

Env-Ws 1403.03 Opening for Building Construction.

- (a) Subject to (b) below, the opening for building construction shall be measured on the horizontal plane as the area extending 25 feet from access roads, driveways and other impervious surfaces, septic systems and all structures except accessory structures.
- (b) Between the primary building line and the reference line, the opening shall be measured on the horizontal plane as the area extending 15 feet from access roads, driveways and other impervious surfaces, septic systems and all structures except accessory structures .
- (c) The opening for construction of an accessory structure shall be measured as the area extending 10 feet outward from the footprint of the accessory structure.
- (d) The property owner shall stake the building(s) footprint(s) in the field.

Env-Ws 1403.04 Trees Outside Building Construction Opening.

- (a) Any tree located outside the opening for building construction shall be counted in the basal

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area percentage limitation calculations, subject to RSA 483-B:9, V(a)(2)(D).

(b) For purposes of determining compliance with RSA 483-B:9, V(a)(2)(A), only those areas outside the opening for building construction shall be considered.

Part Env-ws 1404 Erosion And Sedimentation

Env-Ws 1404.01 Compliance. Pursuant to RSA 483-B:9, V(c), construction, earth moving or other significant alteration of the characteristics of the terrain within the protected shoreland shall comply with RSA 485-A:17 and Env-Ws 415.

Part Env-ws 1405 Placement And Size Of accessory Structures

Env-Ws 1405.01 Applicability. Requirements of this part shall apply to accessory structures located between the reference line and the primary building line, including but not limited to storage sheds, wells, pump houses and gazebos.

Env-Ws 1405.02 Construction. Accessory structures shall be:

- (a) Constructed only if allowed by local zoning; and
- (b) Constructed in accordance with the local building code.

Env-Ws 1405.03 Status. Accessory structures shall:

- (a) Not exceed 20 feet in height; and
- (b) Have a footprint no larger than 150 square feet.

Env-Ws 1405.04 Setback.

(a) Subject to (b) below, all accessory structures built after the effective date of these rules shall be set back at least 20 feet from the reference line.

(b) The minimum 20-foot setback shall not apply to structures that require direct access to the water as an operational necessity, including but not limited to piers, docks, boathouses, retaining walls, pump houses, wells and other functionally water-dependent structures.

Env-Ws 1405.05 Placement. No accessory structure shall be built on land having greater than 25% slope.

Part Env-ws 1406 Nonconforming Structures

Env-Ws 1406.01 Replacement of Nonconforming Primary Buildings Damaged by Accidental Means. Any nonconforming structure damaged by accidental means shall be rebuilt, repaired or removed within one year of the date of the accident.

Env-Ws 1406.02 Replacement of Nonconforming Primary Buildings Other Than Those Damaged By Accidental Means. The replacement of any nonconforming primary structure shall be at least as far back as the primary building line.

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Env-Ws 1406.03 Decks and Porches of Nonconforming Structures. Decks and porches located between the primary building line and the reference line shall not be converted to become part of the primary living space.

Part Env-ws 1407 Variance From The Minimum Standards

Env-Ws 1407.01 Information required for a variance request. Each applicant for a variance under RSA 483-B:9, V(g) shall provide the following information on a form obtained from the department:

- (a) Name of landowner;
 - (b) Mailing address of landowner;
 - (c) Location of subject parcel and tax map number;
 - (d) Description of the lot with sketch showing surface waters and the reference line;
 - (e) A specific reference to the chapter or rules for which a variance is being sought;
 - (f) A full explanation of the development for which a variance is sought;
 - (g) Pursuant to RSA 483-B:9, V(g), the reason for requesting a variance based on the criteria which govern the grant of a variance by a zoning board of adjustment under RSA 674:33, I(b); and
 - (h) Evidence that the criteria specified in (g) above have been met.
- Env-Ws 1407.03 Local Notification. Each applicant for a variance shall submit a copy of the information required by Env-Ws 1407.02 to the local governing body, at the time of submittal to the department.

Env-Ws 1407.04 Findings. The department shall approve a request for variance upon finding that the proposal is adequate to ensure that the intent of RSA 483-B is met and that the criteria for granting a variance under RSA 674:33 have been met.

Env-Ws 1407.05 Reason for Denial. No variance shall be granted which, in the judgement of the department, contravenes the intent of RSA 483-B or any rule.

Part Env-ws 1408 Urbanized Shoreland Exemption

Env-Ws 1408.01 Exemption. Pursuant to RSA 483-B:12(I), the governing body of a municipality may, in its discretion, request the commissioner to exempt all or a portion of the protected shoreland within its boundaries from the provisions of this chapter if the governing body finds that special local urbanization conditions exist in the protected shoreland for which the exemption is sought.

Env-Ws 1408.02 Evidence.

- (a) Pursuant to RSA 483-B:12(II), the municipality shall present evidence of existing and historical patterns of building and development in the protected shoreland, which shall address

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the following:

- (1) Current and past building density;
 - (2) Current commercial or industrial uses;
 - (3) Municipal or other public utilities; and
 - (4) Current municipal land use regulations which affect the protected shoreland.
- (b) The municipality shall also provide:
- (1) The number of structures in sight from the waterbody;
 - (2) Density allowed under current local zoning ordinances;
 - (3) Extent of non-residential land use currently existing; and
 - (4) If available, a recent aerial photograph of the area.

Env-Ws 1408.03 Delivery. The applicant shall send the evidence directly to the office of state planning with a copy to the commissioner.

Env Ws 1408.04 Time Frames for Decisions.

- (a) Provided the office of state planning notifies the applicant in writing of the reasons for the extension, the office of state planning may take up to an additional 30 working days to perform the review.
- (c) The commissioner shall approve the request if the evidence required in Env-Ws 1408 shows that the municipality has existing and historical patterns of building and development in the protected shoreland.
- (d) The commissioner shall issue findings in support of the decision within 30 working days from receipt of the recommendation.

Part Env-ws 1409 Shoreland Protection Certification

Env-Ws 1409.01 Other Department Permits.

- (a) Pursuant to RSA 483-B:6, any person applying for any of the following permits shall submit the certification application as specified in (b):
 - (1) Wetlands permit pursuant to RSA 482-A.
 - (2) Individual sewage disposal system pursuant to RSA 485-A:29.
 - (3) Subdivision permit pursuant to RSA 485-A:29.
 - (4) Alteration of terrain permit pursuant to RSA 485-A:17.
- (b) Applicants for any permit listed in (a) above shall, at the time of filing the permit application, also provide the following information on a form obtained from the department:

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- (1) Name of agent or applicant;
 - (2) Town in which the project is proposed;
 - (3) The tax map, block, and lot number;
 - (4) Subdivision name; and
 - (5) The answers to the following questions:
 - A. “Will the project for which a permit is hereby requested involve construction, land clearing, or other development within the protected shoreland as defined by RSA 483-B: 4, XV? Answer yes or no.”;
 - B. “If the project involves construction, land clearing, or other development within the protected shoreland, will it meet or exceed the development standards of RSA 483-B? Answer yes or not applicable.”; and
 - (6) “If the answer to b. above is “not applicable”, state why.”
- (c) The applicant shall agree to and sign the following: “ As owner or agent for the owner of the subject property, by my signature below I certify that: My responses to questions above are correct to the best of my knowledge. I am familiar with the requirements of RSA 483-B and have knowledge of the development activities which will be undertaken. The plans and other information submitted with this permit application provide a complete description of the project and demonstrate how compliance will be accomplished. I understand that false information given in this certification may result in revocation of any permit granted by the department of environmental services as a result of this application. I also understand that RSA 483-B:18 provides that violations subject the responsible party to remediation or restoration of the land affected, fines up to \$20,000 for each day of continuing violation, imprisonment and other penalties.”

Administrative Rule Changes to Part Env-Ws 1002:

Env-Ws 1002.28 “Natural woodland buffer” means “natural woodland buffer” as defined by RSA 483-B:4, XI.

Env-Ws 1002.31 “Primary building line” means “primary building line” as defined in RSA 483-B:9, II(b).

Env-Ws 1002.32 “Protected shoreland” means “protected shoreland” as defined by RSA 483-B: 4, XV.

Env-Ws 1002.35 “Reference line” means “reference line” as defined by RSA 483-B:4, XVII.

Env-Ws 1002.36 “Restrictive layer” means a soil horizon that restricts the downward flow of water and is uncharacteristic of the soil layers above and below, such as a layer of soil with a consistence of firm or very firm, cemented horizons, or stratified layers of silt, loam or clay within the soil profile.

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Env-Ws 1002.39 “Shoreland frontage” means the average of the distances of the actual natural shoreline footage and a straight line drawn between property lines.

Administrative Rule Changes to Part Env-Ws 1003.04:

- (r) If the lot is within the protected shoreland, the following additional information :
- (1) Length of shoreland frontage, if the development is residential;
 - (2) Lot width, if the development is commercial; and
 - (3) The topography of an area equal to or greater than the lot size determined by Env-Ws 1005.02 for each lot.

Administrative Rule Changes to Part Env-Ws 1003.05:

- (ae) If the lot is within the protected shoreland the following additional information :
- (1) The reference line;
 - (2) The primary building line;
 - (3) Distance and location of nearest surface waters in relation to disposal system unless the nearest surface waters is greater than 125 feet away; and
 - (4) A designation on the plan of the limits of the natural woodland buffer.

Chapter Env-c 611 Fines Relating To Development Within The Protected Shoreland

Statutory Authority: RSA 483-B:17

Env-C 611.01 Definitions.

Any term used in these rules shall have the same meaning as in the law or rule to which the fine relates.

Env-C 611.02 Water Quality Violations.

Determination of a water quality violation shall be done in accordance with Env-Ws 430.

Env-C 611.03 Fines Relating to Salt Storage Yards, Auto Junk Yards and Solid or Hazardous Waste facilities.

For violations relating to RSA 483-B:9 regarding salt storage yards, auto junk yards, and solid or hazardous waste facilities, the fine shall be \$2,000 if not resulting in water quality violations and \$2,500 if resulting in water quality violations.

Env-C 611.04 Fines Relating to Construction of Primary Structures.

- (a) For violations relating to construction of a primary structure between the reference line and the primary building line, the fine shall be \$3,000.

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(b) For violations relating to construction of an addition that extends the structure closer to the public waters, except the addition of an open deck or porch up to a maximum of 12 feet towards the reference line pursuant to RSA 483-B:11, II, the fine shall be \$2000.

(c) For violations relating to the enclosure of an open deck or porch, located between the reference line and the primary building line, the fine shall be \$2000.

Env-C 611.05 Fines Relating to Fertilizer Use Within the Protected Shoreland.

For use of fertilizers not in accordance with RSA 483-B, the fine shall be \$500 if not resulting in water quality violations and \$1000 if resulting in water quality violations.

Env-C 611.06 Fines Relating to the Natural Woodland Buffer.

(a) For building construction of an accessory structure in the natural woodland buffer zone not in accordance with Env-Ws 1400, the fine shall be \$2,000.

(b) For each stump removed within 50 feet of the reference line, the fine shall be \$1,000 if not resulting in water quality violations and \$1,500 if resulting in water quality violations.

(c) For failure to maintain a well-distributed stand within the 150 foot natural woodland buffer zone the fine shall be \$4,000 if not resulting in water quality violations and \$4,500 if resulting in water quality violations.

(d) For failure to maintain a 50% basal area within the 150 foot natural woodland buffer zone the fine shall be \$4,000 if not resulting in water quality violations and \$4,500 if resulting in water quality violations.

Env-C 611.07 Fines Relating to Failure to Comply With An Order.

For failing to comply with a department order, the fine shall be \$2,000.

Env-C 611.08 Failure to Pay Fines.

For failure to pay a fine imposed in accordance with these rules, the fine shall be 10% of the amount of the originally-imposed fine per month or portion thereof for any part of an unpaid fine. Fines for failure to pay a fine shall be imposed in accordance with these rules.

Env-C 603.02 Fines Relating to Alteration of Terrain.

For violations relating to RSA 485-A:17, Env-Ws 415, RSA 483-B, and Env-Ws 1400 regarding alteration of terrain, the amount of the administrative fine shall be as follows:

(g) For construction, earth moving or other activities resulting in the significant alteration of 50,000 sq. ft. or greater of the terrain within the protected shoreland without a permit:

(1) \$3,000 if the activities have not caused a water quality violation; and

(2) \$3,500 if the activities have caused a water quality violation;

(h) For construction, earth moving or other activities within the protected shoreland for which

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a permit has been obtained but which is not in conformance with the conditions of the permit:

- (1) \$2,000 if the activities have not caused a water quality violation; and
- (2) \$2,500 if the activities have caused a water quality violation;
- (i) Failure to design and construct new structures to prevent erosion of exposed soils:
 - (1) \$1,000 if the activities have not caused a water quality violation; and
 - (2) \$1,500 if the activities have caused a water quality violation.

Env-C 604.01 Fines Relating to Subdivisions.

For violations of RSA 485-A [and], Env-Ws 1000, RSA 483-B, and Env-Ws 1400 relating to subdivisions, the amount of the administrative fine shall be as follows:

- (e) For commencing road construction on, clearing vegetation from, placing fill on or otherwise altering a parcel of land within the protected shoreland for which plans are required to be submitted pursuant to RSA 483-B:9 prior to obtaining approval of the subdivision plan, \$2,000.

Env-C 604.02 Fines Relating to Septic Systems.

For violations of RSA 485-A, Env-Ws 1000, RSA 483-B:9, and Env-Ws 1400 relating to septic systems, the amount of the administrative fine shall be as follows:

- (r) For failure to meet the required setback requirements for all new leaching portions of new septic systems, \$2,000.